

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND INDUSTRY**

Call to Order: By **CHAIRMAN JOHN HERTEL**, on March 18, 1999 at
8:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Fred Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 607, 3/10/1999
HB 506, 3/10/1999
HB 264, 3/10/1999
HB 201, 3/10/1999

Executive Action:

{Tape : 1; Side : A; Approx. Time Counter : 0}

HEARING ON HB 607

Sponsor: REP. LOREN SOFT, HD 12, BILLINGS

Proponents: Jerry Loendorf, MT Medical Assoc.
Bill Olson, AARP
James Jarrett, M.D., MT Medical Assoc.
Jim Ahern, M.D., MT Hospital Assoc.
Susan Good, Citizen
Claudia Clifford, Health Policy Specialist, State Auditor's Office
Mary McCue, MT Clinical Mental Health Counselors Assoc. and MT Dental Assoc.
Steve Yeakel, MT Children's Alliance
Sami Butler, MT Nurses Assoc.
Don Judge, AFL/CIO
Gloria Hermanson, MT Psychological Assoc. and MT Academy of Opthamolgy
Al Smith, MT Trial Lawyers Assoc.
Brian Garrity, Board Member, Mental Health Assoc. of MT.

Opponents: Tom Ebzery, Yellowstone Community Health Plan, St. Vincent Hospital & Health Center, Holy Rosary Hospital and St. James Hospital, Billings.
Dr. Joseph Knapp, MT Health (MHO), Missoula
Susan Witte, Blue Cross-Blue Shield
Dr. Jeff Hines, Medical Director, Great Falls Clinic
Larry Jones, Liberty Northwest
Page Dringman, Health Insurance Assoc. of America
Joyce Brown, Chief, Employee Benefits Bureau, MT State Government
Don Allen, MT Medical Benefit Plan
Jacqueline Lenmark, American Insurance Assoc.
Anita Bennett, Member Services Director, MT Logging Assoc.
Tanya Ask, Montana Health, Blue Cross-Blue Shield
Bill McDonald, MT Assoc. of Health Care Professionals
Mike Becker, Blue Cross-Blue Shield
Riley Johnson, National Federation of Independent Business

Opening Statement by Sponsor:

REP. LOREN SOFT, HD 12, BILLINGS. He gave his presentation and handed in the written copy **EXHIBIT(bus61a01)**. He also presented some amendments **EXHIBIT(bus61a02)**.

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Proponents' Testimony:

Jerry Loendorf, MT Medical Assoc. The most important provision of this bill is it makes managed care organizations responsible for their health care treatment decisions--nothing else. That is the sole responsibility that this bill places on an HMO (health management organization). This bill does not affect what are sometimes referred to as coverage decisions. In other words, if a HMO makes a decision on the basis of what its contract or policy, certificate, plan, etc. states, such as this treatment is not covered by our policy, this bill does not affect it. If there is coverage and health care treatment decisions are made, then this bill says they are responsible for them. That responsibility is only that they use ordinary care in making those decisions--nothing special. That is the same burden imposed on everyone of us in all the everyday activities we undertake.

The bill provides for an independent review process. This is a simple, inexpensive, out of court process that people need to be made right up front about their health care decisions. They don't need long, drawn out court proceedings.

Thirdly, today, I would like to discuss a few of the arguments that might be made against this bill. We know no one is going to argue against the main premise of this bill. One argument is that there are going to be so many lawsuits, etc. One lawsuit and 280 claims through the independent review process in the state of Texas in a one year period is all that happened. Another argument being made is that this bill would adversely affect the CHIP program. If an HMO contracts with the chip program, the HMO will have this responsibility to use ordinary care in dealing with the kids in the CHIP program. Will that affect their costs in a significant way. Insurance companies deal with risk pools. They keep that pool large so losses over here can be offset by the profit over here. Every time a policy holder or group is added, the risk pool is expanded. By contracting with a CHIP program, they add to their risk pool. If we want an insurance company or HMO to use ordinary care in their decisions, why should we not want them to the same care in dealing with the children in the CHIP program. Thank you.

Bill Olson, AARP. I would like to say that two words in this bill are very important. They are accountability and ordinary care. Just the title of the bill covers it all. The complexity

of managed health care of overwhelming at best and we are in support of this bill.

Jim Jarrett, M.D., MT Medical Assoc. He gave his testimony and handed in the written copy **EXHIBIT (bus61a03)**.

Jim Aherns, M.D., MT Medical Assoc. Hospitals are not unanimous on this issue. You will hear some opponents to the bill. The MHA supports the bill for this reason. Facilities are accountable for their decisions and that includes hospitals, surgery centers, outpatient facilities, etc. Practitioners of any type are accountable, i.e. doctors, nurse practitioners, physical therapists, etc. Health carriers should probably assume the same responsibility because they are a part of this three-legged stool. All these entities are involved in health care decisions. It wasn't that long ago that hospitals under a doctor and a charitable immunity could not be sued at all. It seems strange, doesn't it. I knew the lawyer who was involved in the decision where that was reversed. Forty years ago you could sue a hospital or the world would fall apart. It hasn't and I don't think the world will fall apart if this law is enacted. We urge your support of the bill. Thank you.

Susan Good, Citizen. I had not intended to get involved in **HB 607** and had determined not to do that until this flyer **EXHIBIT (bus61a04)** appeared on the Floor of the House on second reading. I have worked on health care issues from the patients' perspective for many sessions. When I saw the flyer put out by the opponents of this bill citing the anti-gag clauses that Montana has, citing the mandatory point of service that Montana has, the direct access to OB-GYN and the provider network adequacy and quality assurance filings as proof that **HB 607** was not necessary, I changed my mind. The opponents who sit on this bill today are the same opponents who opposed every single one of the provisions that they tout now saying the above were adequate to protect the patients in Montana. Thank you.

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Claudia Clifford, Health Policy Specialist, State Auditor's Office. The Commissioner of Insurance is in support of this bill particularly because of the provisions that deal with the peer review system. We are the office that receives many of the phone calls and complaints from consumers in Montana when they have difficulties, concerns or just questions about their health care and health care policy. To the extent that you will strengthen the system of helping to head off those problems, we are in favor of this bill. We receive 20,000 calls a year on a variety of insurance issues and few calls would be appreciated.

Mary McCue, MT Clinical Mental Health Counselors Assoc. & MT Dental Assoc. Both associations support this legislation for the same reasons that have been expressed already. This bill is simple. It holds the insurers and HMO's to the same duty of care that each of us in this room has to one another as we go about the business of our daily life. What possible reason could there be not to hold an insurance company or managed care organization to that same standard. It doesn't impose a higher standard. As they go about their business, we believe that they should be held to the same standard as the rest of us. We are supportive of the provision that provides for the peer review process. We realize that can be a very inexpensive way of dealing with adverse determinations by these companies and we hope that you will give this a do pass recommendation. Thank you.

Steve Yeakel, MT Children's Alliance. We are pleased to be in support of this bill and surprised by the controversy that it did not generate within our organization. It would be fair to say that through the course of the 15 workshops and community forums that we had last fall where this issue was featured in the agenda, we did not have people stepping forward in support of this bill. I thought there would be more said about the bill because it had been such a hot item at the federal level. That didn't occur either. When we asked questions about the bill and people's feeling about the bill, many said it seems like a matter of basic fairness. Thank you.

Sami Butler, MT Nurses Assoc. We agree with the statements that have been made and we want to add two words: patient protection. We support this and hope you do, too.

Don Judge, AFL/CIO. We are offering our support of this bill. There were concerns raised in the House regarding the application of this to jointly administered trust. We believe those have been taken care of with amendments in the House. We are comfortable with the bill and think it is the right thing to do. We want you to realize Montana is not alone. There are efforts going on across the country to regulate HMO's and PPO's. This is a good shot for consumers and urge a do pass.

Gloria Hermanson, MT Psychological Assoc. & MT Academy of Opthamology. Both organizations are strongly in favor of **HB 607**. Some of these experiences that psychologist have had with the current contracted care association for mental health have shown very strongly how much this bill is really needed. When it comes to a question of cost, think about the cost of a child who is under psychological care and in crisis and unable to get continued care because of a managed care entity decision. Some

of those result in suicide. That's a cost. Please give a do pass on this bill.

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Al Smith, MT Trial Lawyers' Assoc. This is not a lawyer relief bill. People come to our office and because of care that has been wrong or delayed and they have no way to hold that HMO accountable. That is what this bill is talking about-- responsibility. Currently, if a person is harmed through delay or wrong decision, they can sue and get that treatment they were denied paid for. What they don't get is monetary compensation for lost wages, for the pain and suffering, and for the wrongful death of a loved one. We all are accountable and responsible for our actions and this bill says insurers should be accountable and responsible for their actions. They should not go beyond the steps of managing the health care plan and should not start making medical treatment decisions and dictating to doctors what treatment they can or cannot provide. This is a patient protection bill. If this was a lawyer bill there would not be a peer review court. There are many steps in the bill to protect the patient to make sure they get the treatment that their doctor has recommended. They can only be sued under this plan after the peer review system has been used. It is not just step up and sue the health care plan.

Legal liability will help keep HMO's responsive to treatment needs that have been prescribed by the physician. It allows those who are harmed to be compensated for the harm that they did suffer. I don't believe that there will be high costs triggered for health care as has been predicted. In Texas, there shows less than one percent increase in costs. It also seems that HMO's that have immunity, act with impunity.

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There are arguments that this bill will allow all the doctors and the HMO's to be sued for the same cause. Doctors can be sued if their negligence causes harm to someone, but this bill would allow this only in the instance if the doctor and the HMO in collaboration denied or delayed care to a patient based upon the plan's needs as opposed to medical needs of the patient. I don't see that happening. What we have are physicians who want to provide the best treatment for their patients. HMO's can manage their plans which is what they are designed to do and stay out of the treatment making decisions for the patient. Thank you.

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Brian Garrity, Board Member, Mental Health Assoc. of MT. We strongly support this legislation for all the reasons previously stated. It is good legislation that will help protect the rights of patients to get appropriate health care.

Opponents' Testimony:

Tom Ebzery, Yellowstone Community Health Plan, St. Vincent Hospital & Health Center, Holy Rosary Hospital and St. James Hospital, Billings. He presented his testimony and handed a copy in along with several fact sheets **EXHIBIT (bus61a05)**.

{Tape : 1; Side : B; Approx. Time Counter : 12.3}

Dr. Joseph Knapp, MT Health (HMO), Missoula. I am an internist and cardiologist at the Western Montana Clinic in Missoula. I am representing my 70 colleagues who are partner-owners of MT Health which is a managed care product available in the western part of the state. We are an organization that supports the bulk of **HB 607**. We, however, stand in opposition to the liability aspects of this bill. I would like to address the issue of premiums and the issue of who is actually making medical decisions in managed care in Montana.

We live in a state that ranks quite low on the economic scale of this country. We have a price sensitive market for virtually every aspect of our daily life. Health insurance is no different. **REP. SOFT** speaks about the Kaiser Family Health Foundation and their study that indicated that adding liability to a health care plan would increase premiums in the range of 0.6 to 1.0 percent. That is a valid study; however, there are others including the Congressional Budget Office that have identified increases in premiums as high as 3 to 8 percent. This is no small potatoes to a small businessman. We have had a year's experience here in western Montana dealing with managed care. Our response to the market place has been nothing short of phenomenal. We have in excess of 10,000 enrolled members. The vast majority of these individuals are small businessmen. The reason they are in Montana Health is that they can afford it. Any increase in premium is going to be a direct pass through and the small businessman will see this. The plans don't see this. This is a pass through and onto them. This, in turn, affects their employees as well. For us who are trying to expand the insurance marketability in Montana, we see this as objectionable. The intent behind this sounds altruistic. The concept of keeping the plans responsible for their actions is not wrong when looking at Magellan and that has become a very nasty word in this state. Managed care in Montana comprises of MT Health, MT Care in Great Falls, the Yellowstone Community Health Plan and New West are all

physician-driven plans. These are not predatory managed health care plans. Managed care in Montana is physician-based and physician-driven. The insurance carrier is not making medical decisions. I am making medical decisions as are my medical partners. There is much good in this bill and much to be gained from this bill. The liability issues need to be looked at by the effect they will have on the marketplace which is to make health insurance less affordable to the small businessman and independent purchasers of insurance in our marketplace. Thank you for your time.

{Tape : 1; Side : B; Approx. Time Counter : 16}

Susan Witte, Blue Cross-Blue Shield. She presented her testimony and handed in a copy **EXHIBIT(bus61a06)**. She also handed in some amendments **EXHIBIT(bus61a07)**. She also handed in a fact sheet **EXHIBIT(bus61a08)**.

{Tape : 1; Side : B; Approx. Time Counter : 20.2}

Dr. Jeff Hines, Medical Director, Great Falls Clinic. I am a board member of Montana Care which is a health care organization in Great Falls. I am here in opposition to **HB 607**. I would like not to reiterate many of the things that have already been stated. I am a member of the MMA (Montana Medical Assoc.) but am not a member of the AMA (American Medical Assoc.) any longer because it became apparent that the AMA had become a vehicle for digging in and resisting health care change in the country. When I learned that MMA was in support of this bill, I was incensed. I called them and asked them the following three questions: 1. how many physicians in Montana, the answer was 2,000; 2. how many physicians are members of the MMA, the answer was approximately 900; 3. how many physicians were at the fall meeting where this **House Bill** originated, the answer was approximately 60. I would suggest to you that the MMA does not represent the physicians in the state. In fact, if physicians knew that another tier of litigation were being implemented, there would be strong opposition to this bill. It is hard for me to imagine that we have a group of physicians in association with the trial lawyers association who are behind this bill, this doesn't pass the "smell" test. Something is going on. There is a small group of people in our state, representing the physicians of our state, who are pushing this for their own agenda. I think their priority is to halt health care change in the state which I see as a disadvantage. I think physicians in this state are leading and paving the way for health care change that is needed. We need responsible and responsive health care but at an affordable cost. We have physicians who are taking the time and

effort to make these changes. These things are not being done by out of state, conglomerate corporations.

There are too many frivolous lawsuits being initiated in this state. One of my chief roles as medical director of our organizations is to look at medical risk malpractice and I would like to say there is a tremendous amount of foolishness going on. Fortunately we have a medical legal panel that weeds out most of this foolishness. Unfortunately, the litigation or liability portion of this bill does not have to go back through that medical legal panel. It is outside of that. That is crucial error in my judgment. The time and money spent handling even the most frivolous lawsuits is significant. It is unnecessary. Opening the door for more litigation that is not under the supervision of our legal medical panel is a big mistake. I am in opposition of this bill. I would be willing later to make further comments on my experience on medical malpractice and the abuses of that system and the values of that system. Thank you.

Larry Jones, Attorney, Liberty Northwest. We are a health carrier in this state. We are the largest private Workers' Compensation carrier in the state. No one has asked the simple question: would this bill apply to the Workers' Compensation system. And no one has asked that question because we assume that it does not. I would refer you to the definition of "health carrier" in this bill. It is extremely broad. A good argument could be made that it would apply to Workers' Compensation system and if it did it would significantly increase cost in that system. We do join in the other comments in opposition to the bill. Thank you.

Page Dringman, Health Insurance Assoc. of America. We are a trade organization with about 266 members and 15 of those members do business in Montana. They are health carriers. They do not do managed care. This bill ostensibly provides liability for health carriers for decisions that affect the quality of the diagnosis, care or treatment provided. An amendment offered in the House, says "the term does not include the decision by a health carrier or a managed care entity to deny payment or coverage for services based on the provisions of a policy, contract, certificate or agreement." I still have questions about this language. That is why a health carrier would deny coverage based on the policy. They would say that specialist is not part of our provider network, that treatment we don't believe is medically necessary and the policy provides for what is medically necessary. We believe that treatment is experimental in nature. Does this language truly exempt those sorts of coverage decisions. Those are coverage decisions based on the policy but I am not convinced that this language actually exempts that. If it does, why do we have health carriers in this bill at

all? Why would they ever make a decision that is not a decision to deny coverage based on the provisions of a contract? Montana has adopted a number of tort reform measures in recent sessions. They have put limits on medical malpractice liability. They have instituted a medical legal panel for review. In 1997, they passed some tort reform for multiple defendant situations. This bill flies in the face of tort reform. This is a significant expansion of liability. It creates a huge risk. You can already sue your HMO, your health carrier, based on contract, claiming that the services to be provided under the contract were not provided. This creates an incentive to litigate. If you look at the case law reports in Montana, they are full of cases discussing the issues of approximate cause: when something is the approximate cause of an injury or when someone has or has not exercised ordinary care. This is a lawyer's dream.

Texas has been mentioned and their law did not create the litigation anticipated. The law has been in place for about one year. There was probably a delayed effective date. The Texas law has a much different review provision. It has an internal review provision that requires certification by the state insurance commissioner. It sets a more stringent structure for external review. That could have some effect on the number of cases that have gone beyond that. Do we want to pattern ourselves after Texas who has the second highest rate of non-insurance in the U.S. of people not covered. Texas has 27% of their population not covered. Montana has 22% not covered. The concern with imposing an additional layer of liability is if you create the incentive for litigation our health carriers are going to be possibly forced to practice defensive medicine? Are they going to say they don't want the risk of liability and just cover everything? If so, we will see burgeoning costs in health care in Montana.

In 1994, a California HMO was sued over a decision not to provide a bone marrow transplant for a breast cancer patient on the basis that the treatment was experimental. There was an \$89 million judgment against the HMO for not providing that treatment. Since that time, they have been providing bone marrow transplants. There are two new studies to be released in May, but the preliminary results published say bone marrow transplants are not having the success anticipated and in fact hastens death in many cases. This has come at a tremendous cost. This is the sort of thing that petrifies health insurance companies and should concern all of us because our premiums are used to pay for this.

Montana has a limited market already for insurers. If this law were to pass, and we would be the second state to adopt this kind of law, some health carriers and some HMO's would elect not to do business here. The amount of premiums and people that can be

insured are not worth the risk of liability. I would encourage you not to support this bill. If you do support the bill, support only the peer review provisions. Thank you.

{Tape : 1; Side : B; Approx. Time Counter : 33.6}

Joyce Brown, Chief, Employee Benefits Bureau, MT State Government. She gave her testimony and handed in her written copy **EXHIBIT (bus61a09)**.

Don Allen, MT Medical Benefit Plan. We don't have HMO's. We are a small insurance company headquartered in Kalispell. We have been a champion to provide insurance for small employers. In this state, we lead the nation with 26% only of employers, with 2-9 employees, that provide insurance for their employees. This is a bill, that is one of four going through the legislature this time, that is going to drive the cost up for the average Montanan and the small business people. Concerning the California case and the Aetna case mentioned by Blue Cross-Blue Shield, all the medical people got paid in those cases, and the reason for going to court for the big settlement was that the lawyers didn't get paid. That should tell you something.

Jacqueline Lenmark, American Insurance Assoc. We strongly oppose **HB 607** and would request you table the bill. Our interest in the bill is that I represent those companies that insure the health plans. I do not represent health insurers but the property and casualty companies that write the general liability policies for the health plans. This is going to increase the cost for those health plans and is going to substantially increase the costs for the insured under those health plans. I would invite the committees questions regarding that particular aspect of this so I could provide you with some different information. I also represent Magellan Behavioral Health. I would like to caution the committee not to be beguiled or seduced by testimony in this hearing about how this bill will affect Magellan Behavioral Health. Magellan is not affected by this bill, it is excluded both by the applicability section of the bill and by the provisions of the insurance code. Those who are telling you about Magellan either have not had the time to read the bill or read the insurance code or are being disingenuous with the committee. Please table the bill on behalf of both my clients.

{Tape : 1; Side : B; Approx. Time Counter : 39.4}

Anita Bennett, Member Services Director, MT Logging Assoc. I do have an amendment **EXHIBIT (bus61a10)** and testimony.

Tanya Ask, Co-CEO, Montana Health, Blue Cross-Blue Shield. I do need to correct, at some point, some erroneous statements made by the proponents about support of legislation. I have a prepared statement to hand in **EXHIBIT (bus61a11)**.

Bill McDonald, MT Assoc. of Health Care Purchasers. We are a group of employers concerned about health care costs. I have testimony **EXHIBIT (bus61a12)**.

Mike Becker, Asst. General Counsel, Blue Cross-Blue Shield. I have testimony and articles **EXHIBIT (bus61a13)** that I would like to hand in.

Riley Johnson, National Federation of Independent Business. This is about affordability of health insurance costs and we can't take anymore hits.

{Tape : 1; Side : B; Approx. Time Counter : 40.7}

Questions from Committee Members and Responses:

SEN. COCCHIARELLA asked **Susan Good** to given an explanation of her previous statement. **Ms. Good** said that in the heat of the moment she mis-spoke. She does apologize. She said that the opponents of this bill were also opponents to the ob-gyn direct access bill and they were not. They were also proponents not opponents of the quality assurance bill.

SEN. COCCHIARELLA asked **Jacqueline Lenmark** if this bill applies to Workers' Compensation. **Ms. Lenmark** said that American Insurance Assoc. (AIA) which represents two insurers has concerns that this bill will reach to Workers' Compensation. It would be a long legal discourse for her to lead the committee through the code to get to that place. In general terms, Plan II carriers the private insurance companies, are not exempt from the Insurance Code. They are subject both to the provisions of the Workers' Compensation Act and to the provisions of the Insurance Code. This bill talks about health care treatment decisions. If you walk through that and get to the managed care portion and correlate that with the Workers' Compensation Act, you will see that the companies that she represents would be subject to this bill and that would increase the cost of that insurance. The other concern is that Plan I and Plan III which are exempt from the Insurance Code would be drawn into this by judicial decision. It has been shown that the Montana Supreme Court did that in the past with Workers' Compensation decisions and also with decisions that reach self-insured entities in other areas of liability. This is a serious concern; and AIA would request the bill be tabled.

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SEN. MCCARTHY asked **Tanya Ask** to comment on some of the given testimony. **Ms. Ask** said that in the last legislative session the provider network adequacy and quality assurance filings was supported strongly by the managed care providers in the State of Montana. It was done so for one reason. It was to make individuals in Montana feel comfortable with the local mechanisms that were being developed. They were asked why they would support such a great regulatory piece of legislation which adds additional burdens on Montana Health. They thought it was necessary so the individuals who are buying protection in Montana feel comfortable with the protections that they were buying. Montana Health was in strong support of that and several other measures that were passed. They were opposed to one measure only.

SEN. MCCARTHY asked **REP. SOFT** about a statement in his opening about a patient going in for a heart transplant who had to undergo psychiatric evaluation. Having known two individuals who have had heart transplants, this testing is part of the pre-program. The purpose is to find out if the patient is stable enough and the families also to survive the long ordeal and the aftercare. What was your objection to this testing? **REP. SOFT** said that if that is part of the procedure, that is fine, but the concern is that it took a long time for everything to happen and further delayed the heart transplant and ended up dying of cardiac arrest. **SEN. MCCARTHY** said that heart transplants don't happen overnight and the process can take a long time. Then after the testing they are put on a list as a recipient. Patients do die before the procedure can take place. Do you think this bill would speed up the process? **REP. SOFT** said this particular process took a year and that turned out to be too long.

SEN. SPRAGUE asked **REP. SOFT** if the amendments to exclude the litigation had been offered before and if so, what are your thoughts and objections to those amendments? **REP. SOFT** said that amendments to eliminate litigation would gut the bill. **SEN. SPRAGUE** said the peer review is a very important part of this legislation, isn't it? **REP. SOFT** said, "yes" it is. The litigation piece is important also. And the litigation would only be applied to managed care facilities if they make health care decisions.

SEN. SPRAGUE asked **Al Smith** to anticipate what the cost would be for a case to be litigated because if there were a great deal of litigation the cost of premiums definitely would go up. **Mr. Smith** said the inquiries that were mentioned in Texas were not

legal proceedings. They were the independent peer reviews. As of January 16, 1999, there were 374 reviews and 50% were resolved in favor of the insurers original decision and 44% were overturned the insurers' decision and 6% were half and half. There was only one case of litigation.

SEN. SPRAGUE asked **Tom Ebzery** to comment on the litigation aspect. **Mr. Ebzery** said the statistics that he had mentioned indicated a 5% to 10% increase in premium per person per month. Blue Cross indicated \$26 million increase in Montana if the litigation section were implemented. Only one state, Texas, has gotten into these waters. It is difficult to ascertain but publications have been coming out and these are the indications. **REP. SOFT** indicated a \$31 premium increase per year per family. We feel that is significantly lower than anything that has been published so far. And as always the cost is passed on to the consumer.

{Tape : 2; Side : A; Approx. Time Counter : 11.5}

SEN. COCCHIARELLA asked **Dr. Jarrett** if he were a member of any HMO provider group? **Dr. Jarrett** replied "yes" and that he was in favor of managed care. His group was the first to introduce managed care into Montana. The MMA is a proponent of managed care. We are not against managed care, it is an issue of being an advocate for the patient and making the HMOs responsible for their actions if they act in the area of medical decisions.

SEN. COCCHIARELLA asked **Bill McDonald** to respond to the same question. **Mr. McDonald** said he represents a group of employers who are now contracting on a competitive basis and offering choice to employees with these managed care plans. One of the major expenses in health care right now is unnecessary care. With the appropriate decision making being done by the physicians, the unnecessary care can be cut out that and that ultimately will provide better health care that way.

SEN. MCCARTHY asked **REP. SOFT** if he were against all or part of the Blue Cross-Blue Shield amendments. **REP. SOFT** said he had not looked at those amendments carefully and could not properly answer the question.

SEN. MCCARTHY asked about a term, gag clause. How does that fit into any of this? **REP. SOFT** passed this to another person. **Ms. Ask** said in the last session there were two pieces of legislation which said a health plan may not impose a gag clause on a physician acting as part of that health plan. It is a clause which may be in a contract which says that a physician is limited in what he or she can discuss with his or her patient. She has

not found any of those gag clauses in any of the physician contracts in Montana. In fact, physicians were encouraged to discuss medical treatment options with their patients. There is protection now in two different places in Montana law which says a health plan may not have a contract clause which precludes a physician from discussing treatment options with their patients. Prior to the implementation of those laws, there were no contracts in the state which contained such a clause.

Closing by Sponsor:

REP. SOFT closed. I am a proponent of managed care and one of the few contractors that believes that system has worked. Much information has been heard. I did not anticipate the crowd it would draw when I introduced this bill. In addition to the proponents who have presented testimony today, I have had many letters of support for this legislation. There are mixed reviews within the medical community. Health care is in a state of continuing reform. Consider that fair and equitable health care reform depends on maintaining a very delicate balance between choice and cost and between finding ways to avoid costly litigation. I believe this bill does that with the peer review process. It also provides some measure of recourse for the patient if an adverse health care decision has been made which has wronged them. If an HMO makes a health care treatment decision that affects the quality of care and treatment that one is given, I believe we would want that organization to be held accountable and responsible within a standard of ordinary care, This simply means, as defined in the bill, a degree of care that a person of ordinary prudence in the same profession or specialty or area of practice would use in the same or similar circumstance. When I presented this bill on the House Floor, I had spoken to the fact that a poll was taken of Montanans and done by Congressman Hill. It was not done by him but done for him. The poll taken asked people, "Do you believe managed care organizations and insurance companies should be liable for decisions that they make which delay or deny health care?" Eighty-three percent said "yes", nine percent said "no" and eight percent said "they didn't know." Please give careful consideration to a very hotly contested bill and would ask you to do what is right for patients in Montana. Thank you for your time. **SEN. BISHOP** will carry the bill on the Senate Floor.

{Tape : 2; Side : A; Approx. Time Counter : 21}

HEARING ON HB 506

Sponsor: REP. PAUL SLITER, HD 76, SOMERS

Proponents: REP. JOE QUILICI, HD 36, BUTTE
REP. TRUDI SCHMIDT, HD 42, GREAT FALLS
Frank Crowley, MT Car Repair Specialists
Gary Spaeth, State Auditor's Office
Truman Strouf, Magic City Glass, Billings
Pat Strouf, Magic City Glass, Billings
Jeannie McDonough, Shelby Glass
Jacqueline Ayers, Golden Nugget Body & Paint,
Billings
Donna Fastenau, Hanks Body Shop, Inc., Billings
Skip Clevenger, Bitterroot Glass, Hamilton
Bernadette Clevenger, Bitterroot Glass, Hamilton
Bob Schulte, Schulte Glass, Butte
Jamie Near, Jamie's Westside Auto Body Shop, Helena
Kendall Sundheim, Bozeman
Bud LaRocque, Crystal Clear Glass, Inc., Missoula
Gary Lankford, 3-Way Auto Body, Inc., Great Falls
Mike Oliver, Econo Glass Co., Billings
Larry Lasar, Econo Glass Co., Billings

Matt McDonnell, Big Sky Collision Center, Billings

Lucky Seibert, Seibert's Glass & Detail, Laurel
Robert Mytty, Crystal Clear Auto Glass, Missoula

Gary Harris, Auto Body Specialists, Inc., Billings
Bob Davis, Bob's FasBreak Auto Glass, Billings
Marvin Urlacher, FasBreak Auto Glass

Debbie Berney, Professional Insurance Agents Assoc.
of MT

Jeff Alsberg, Triple A Glass, Inc., Glasgow
Daryl Neigard, Neigard's Auto Body, Great Falls
Dennis Jenkins, Professional Auto Glass, Missoula
Sandra Rick, Consumer Citizen, Billings

Opponents: Greg Van Horssen, State Farm
Rick Cochrane, Cockrane Insurance Agency, Helena
Jodi Smoller, Allstate Insurance Co.
Brad Nelson, Cascade Auto Glass
Lynda Reisbeck, Independent Agent, State Farm
Laura Kotelman, Associate Counsel, National Assoc. of
Independent Insurers
Ralph Wisher, Able Body Shop, Kalispell
Jacqueline Lenmark, American Insurance Assoc.
Sue Weingartner, Alliance of American Insurers
Jon Metropoulos, Farmer's Insurance Co.

Opening Statement by Sponsor:

REP. PAUL SLITER, HD. 76, SOMERS. I present to you **HB 506**. This bill is designed to put a few teeth into a law that was passed last session. There are a number of proponents for this legislation. This bill is necessary and needs the enforcement arm of our government to be diligent to enforce this legislation if it is passed. It creates a few new restrictions for the body and glass repair shops and it puts various laws pertaining to both kinds of repair shops on a more parallel foundation. This bill is about consumer choice and small business free competition. And it seeks to remedy anti-competitive practices.

Proponents' Testimony:

REP. JOE QUILICI, HD 36, BUTTE. I have been in the glass business for about 45 years. This is one of the best bills to protect the consumer in Montana and to protect the small businesses in Montana. There is a problem with glass brokers. They have a centralized billing. You sign a contract with them. These contracts can cost as much as \$5,000. Some of these brokers will put the small glass companies out of business. One of the largest insurance companies in the country has a place called Links where the bill is sent to. Links is owned by PPG Industries. They are one of the largest glass companies in the world. They are now going to dictate that you have to buy so many of your windshields from PPG, or you won't be able to get your billing through Links or even get a windshield job from the insurance company. These practices are unethical. They may be unconstitutional here in the state.

REP. TRUDI SCHMIDT, HD 42, GREAT FALLS. This bill is a bipartisan measure just as it's predecessor, **HB 543**, which I carried last session was also bipartisan. The purpose of both bills is fundamentally the same: to protect consumer choice and maintain free open and fair competition between auto body and glass repair shops. You will hear how insurance companies are actively manipulating consumer choice to benefit themselves, not consumers, and how free enterprise and the viability of honest and professional small businesses is suffering all over Montana as a result. I urge you do adopt **HB 506** to close the loopholes in current law that the insurance industry continues to exploit.

{Tape : 2; Side : A; Approx. Time Counter : 29.3}

Frank Crowley, MT Collision Repair Specialists. In essence, the bill has two features. One addresses the practice of glass

networking and that is going to amend Section 223 of the bill which is on page three. Most of the other provision in here address the issue that **REP. SCHMIDT** talked about which was to clarify and strengthen the law and make it clear so that the Insurance Commission can enforce it. One other small amendment is the response to the insurance companies' request about the lowest prevailing market price. The amendments that you have, the word "lowest" has been restored. Our group felt the insurance companies had a legitimate argument and when that amendment was made in the House, it wasn't fully considered. **REP. SLITER** has proposed to restore that language. There is a series of amendments in here related to independent insurance agents. We have spent considerable time in discussing the concern that they had. Sometimes they are asked about a shop and because they are an independent agent and represent more than one company, we have tried to respond to that concern so they could dispense some minimal information about a shop. So certain parts of the bill do not apply to independent insurance agents. Thank you. We do have a section by section analysis of the bill and the amendments for the committee **EXHIBIT (bus61a14)**.

Gary Spaeth, State Auditor's Office. We are in support of **HB 506** and for the last two years I was the designated person in our office to enforce the glass and auto body laws that were passed in the last session. I hear the stories that you are about to hear on a daily basis in my office. As far as the second part, insurance companies under 543 knew the intent of the bill but they also understood that they could go ahead and suggest. In the last instance, when I had my vehicle worked on, they suggested a company. I went there just like everyone else does.

Jack Gregg, Collision Pro, Helena and Chairperson, MT Collision Repair Specialists. We represents 49 auto body repair shops in Montana. The MT Independent Glass Dealers Assoc. is in agreement with my group. You will hear a diverse group today. We urge your support of this bill. It is an excellent vehicle for opening up competition and making sure the free enterprise system works in our state. We ask only for the opportunity to repair your vehicle. Thank you.

Truman Strouf, Magic City Glass, Billings. We are here today because of three words: conspiracy, deception and monopoly. When insurance companies meet with Safelite Auto Glass and they agree to give them first shot at 100% of the glass business, that falls within the definition of a conspiracy. When the consumer calls the 1-800 number, they are led to believe they are still talking with their insurance company; that is deception. When I get an insurance job and I am forced to bill it through Safelite and they take over 160 days to pay me and withhold a portion of that

payment, that is a monopoly. It gives them a very unfair business advantage. Insurance companies are involved in this. I am here to tell you they did, would and are. There are over 150 small businesses in Montana that can't live with this. We need **HB 506**. Thank you very much.

Pat Strouf, Magic City Glass, Billings. Our eldest son and family are in business with us. We have been in the glass business for 18 years. I wish to draw your attention to page 4, Section 5, lines 14 through 18 and would like to give you a brief example. On Feb. 8, 1999, a customer called our shop and asked if we would pick her car up and fix a chip in her windshield. She said she would leave her insurance information in the car and asked us to contact her agent. We contacted the agent and asked them to please send us a glass breakage report. I was told by the agent's secretary that they no longer issue glass breakage reports but she would contact their glass shop and they would send us an order. Ten minutes later, my phone rang and it was Safelite Auto Glass, my direct competitor, telling me they would be faxing me an order for the car that we were working on. Safelite gave me a referral number and told me what I could charge and that I must send the bill directly to them. For months I have billed through Safelite as I was directed to do by the insurance company. The insurance company would pay in full to Safelite within seven days and then Safelite purposely held my payment for four months and withheld some of the money that was not theirs to keep. They also called my customer to tell them that next time just call the 1-800 number. I have spent hours on the phone to collect one job after another.

I have it all documented **EXHIBIT (bus61a15)**. This one I billed the insurance company directly with Safelite's sheet and my invoice. I had my invoice returned 22 days later with a letter attached telling me that it was mandatory that I have a loss report from the agent and furthermore I should not have done without one. I personally drove to the agent's office with letter in hand and the agent then wrote me out the last breakage report that I had requested 22 days earlier. On March 2, I mailed all the paper work back to the insurance company. It has been 40 days and still no payment. I chose this example as it is more straight forward. The majority of what we go through daily for each insurance job is much more time consuming and complicated. If the insured would have contacted her agent first, she would have been instructed to call the 1-800 number which is Safelite Auto Glass. And I would have been omitted completely. Safelite now tells my customers that I refuse to bill their insurance company so they will have to pay me cash if they still insist on coming to Magic City Glass. I have had several cancellations lately because of these deceptive tactics. The Insurance Commissioner's office has two such incidences that

I have turned over to them lately on this matter. One involves an elderly lady on a fixed income. We are the little fish in the bowl with our direct competitor and the insurance companies which decide who gets fed and how much. The consumer has no idea that when they are told to call the 1-800 number they are no longer dealing with their insurance company but under the control of Safelite Auto Glass. Safelite has assured the insurance companies that **HB 506** is all already dead in the water. That is presumptuous on their part, don't you think? We need your help. Give us back our level playing field so we can at least have the chance to compete. Please give us your support. Thank you.

{Tape : 2; Side : A; Approx. Time Counter : 40.9}

Jeannie McDonough, Shelby Glass, Shelby. We have owned the shop for 11 years and have five employees. One time we had an elderly gentlemen passing through town. He called the 1-800 number on his card. He was on the phone for a long time. I asked if I could help. He needed to know where Great Falls was. I said it was 80 miles away. He said they want me to take it to their preferred shop in Great Falls. I was upset and asked the person on the other end of the line why I was not a preferred shop. The man then explained that the chip repair was already being done and needed a reference number. The man had to beg those guys thinking all the while he was speaking to his insurance company. Another point I want to make is that I own an office supply. I know we have to compete. My customers know that I may charge more, but my customers don't have to call Wal-Mart and ask them what I can charge the customer, get their name and then send the bill to Wal-Mart for a partial payment. I would appreciate your support of this bill. Thank you.

Jacqueline Ayers, Golden Nugget Body and Paint, Billings. I employee nine people. I have heard this bill called protectionism. This bill is anything but that. This bill is about democracy and the right to choose and the right to a free enterprise. Seven years ago I may have been naive to believe that we had the right to free enterprise. The carriers strongly oppose this bill and I ask why they oppose free enterprise. They oppose this bill because they lose control. Insurers like control. The customer has the right to choose their insurance company, their coverage and to pay that bill. I just ask for the right to let them choose my shop and for the insurance company to pay me a fair and competitive price. In Section 5 on page 5, lines 6 through 9, the carriers have stated that they should have the right to set standards and they would like to set the standards without restrictions. I don't believe anyone should have such a strong way to do this. State Farm has a wonderful program called Service First and they should be commended for

this program. This program has a page of very reasonable requirements and if the shop chooses to meet these requirements, they are allowed to be a part of their program. These requirements are not discriminatory and they do not limit people by size, but are limited by the ability to do the work and the equipment that they own. I tell you there are petty and personal reasons that shops are kept off the preferred lists. When I tried to get on the preferred list I was told my shop didn't have curb appeal. The shop was old, but we kept it looking nice with flowers outside and the office was nice. This past year we built a new building and put in curb appeal. When I applied again, the company said I had curb appeal but I don't do enough of our business. Well, imagine that. When an insurance company can suggest 70-80% of their business go to their preferred shop, I am left with 20 to 30% and that to be divided among 10 other shops that are not part of the preferred list. I hope you will support this bill because competition is good.

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Donna Fastenau, Hanks Body Shop, Inc., Billings. We have been in business 35 years and family owned and operated. We employ 16 people. I have copies of signatures from over 300 people **EXHIBIT (bus61a16)** from all around the state to show their support of **HB 506**. I have a letter from USAA **EXHIBIT (bus61a17)** to show you that what is happening in the glass industry is beginning to happen in the auto body repair side and should be stopped now. Thank you for your support.

Skip Clevenger, Bitterroot Glass, Hamilton. We have been in business for 15 years and would like to have a business to pass on to our children. The problem that this bill addresses is evident in our valley. We pay taxes and have four employees who are professionals in their field. Their jobs are affected by insurance companies directing our customers to so-called approved or preferred shops. Our customers are told they have to call a 1-800 number and from there they are told they need to go to an approved shop on their list in Missoula which is about 100 miles round trip to have their work done. This is a hardship on people to do. Besides losing local and repeat customers, some of the money that is paid for these repairs do not stay in Montana to support the local glass and auto body shops and the local economy. Please vote for fairness and consumer choice.

Bernadette Clevenger, Bitterroot Glass, Hamilton. I would like to add that this bill needs to be passed to keep the so-called approved shops from destroying the small local shops. I would like to hand out to the Senators a petition **EXHIBIT (bus61a18)** that is personally signed by all the local glass and body shops

in our community who feel without the passage of **HB 506** how many more years do we have in business.

Bob Schulte, Schulte Glass, Butte. I have written to all the committee and hopefully you have read it. I am in favor in this bill and hope you are too.

Jamie Near, Jamie's Westside Auto Body, Helena. I have been in business for 35 years. I was told years ago that if I did quality work I would get plenty of work. I am confused by how this bill is written. I am a direct repair shop for different companies. I have been of the belief that if a shop is qualified to work on an automobile, it should be the customer's choice to take it there. But my concern is that they be qualified to work on it. Many people come in and want me to fix their car. I try to explain what their rights are. Many companies are very good. State Farm is probably the very best one I have been on. There is some misconception that I am confused about. One of you is trying to explain to me that if this bill goes through, it will give away the insurance companies' choice to even refer one of their customers or an agent to take a car to where they know the auto will be repaired well. How did this bill get turned around so much when I thought our country was about choices. If I get a customer in my shop that is a direct repair from another insurance company and they don't want me to fix their car, I don't want to fix it. I ask them where they want their car to go and be repaired. That is fine with me.

Kendall Sundheim, Bozeman. I own A1 Auto Glass and have been in business 12 years. As a direct result of the networking in the auto glass business, I have had to let five family men go that were quality professionals in our industry. I hope you will support this bill.

Bud LaRocque, Crystal Clear Glass, Inc., Missoula. I have been in the business for 18 years. My livelihood depends on this bill. Please support this bill.

Gary Lankford, 3-Way Auto Body, Inc., Great Falls. I have been in business for 17 years and seven families depend on my shop to stay in business. We need this bill to pass.

Mike Oliver, Econo Glass Co., Billings. Would you look at Section 4, (d) and (e). Happiness in all of this bill be the day when our checks for our claims don't come from our competitors so they are allowed to have the information as to whom our customers are, who we deal with, the prices we pay, etc. Please support this bill.

Larry Lasar, Econo Glass Co., Billings. I opened this business 16 years ago. I now employ 18 people and their families. Please support this bill.

Matt McDonnell, Big Sky Collision Center, Billings. I have been in business for 20 years. I encourage you to vote for this bill.

Lucky Seibert, Seibert's Glass & Detail, Laurel. We employ and feed three families. Recently an insured came to my office and on a phone call for approval to his insurance company, he was directed, coerced and sent to a Safelite operation. This bill will eliminate that situation.

Robert Mytty, Crystal Clear Auto Glass, Missoula. I just gave an exhibit **EXHIBIT (bus61a19)** to be handed out about how people won't pay their bill unless you are a member of Safelite, etc. I employ six people. We need this bill to pass to stay in business.

Gary Harris, Auto Body Specialists, Inc., Billings. I employ ten people. I would like to you support this bill.

Bob Davis, Bob's FasBreak Auto Glass, Billings. I employ three people. Tuesday evening I got a call from Safelite concerning a job I had scheduled and asked me if I would bill them. My customer asked me if they had called and I say that they had. I just about lost the job and had to assure her that I would assume full responsibility for the bill so I could keep the job. I had to sell my job twice to maintain my work. My business is dependent on this bill. I urge your support.

Marvin Urlacher, FasBreak Auto Glass, Billings. We are proponents of this bill.

Debbie Berney, Professional Insurance Agents Assoc. of MT. We are here to offer our support to the amendments that were offered by the sponsor.

Jeff Alsberg, Triple A Glass, Inc., Glasgow. I have been in business 14 years. I support this bill.

Daryl Neigard, Neigard's Auto Body, Great Falls. I have been in business 16 years and I ask you to support this bill.

Dennis Jenkins, Professional Auto Glass, Missoula. I have been in business 18 years and have seen it go downhill in the last 4-5 years. I urge you to vote for this bill.

Sandra Rick, Consumer Citizen, Billings. I am here to tell you the insurance agencies are not doing me a favor by telling me where I have to go. Please pass this bill.

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Opponents' Testimony:

Greg Van Horssen, State Farm. He gave his testimony and handed in the written copy **EXHIBIT (bus61a20)**.

{Tape : 2; Side : B; Approx. Time Counter : 25.2}

Rick Cochrane, Cochrane Insurance Agency, Helena. I would like to address briefly one specific portion of the bill. Would you think about the relationship you have with your insurance agent? If you are in an accident, what kind of questions would you ask? You may want someone to come down and get an estimate in the parking lot. Who can fix your car quickly? Who can match paint well in town? The unfortunate part of this bill is as a producer, I may not mention or provide the name of a particular automobile business or location. I can do is give a list that has been given to me by an insurance company to my client which I feel hurts the relationship we have had maybe for a long time. I oppose the bill and ask that it be killed.

Jodi Smoller, Allstate Insurance Co. She gave her testimony and handed in the written copy and other exhibits **EXHIBIT (bus61a21)**.

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Brad Nelson, Cascade Auto Glass. Our company does several thousand windshield claims on a monthly basis. I was surprised to find myself on the same side of the fence as the insurance companies. There are some concerns that I have with this bill. The issue is about steering. The large insurance company or rather the call center that gets this claim and has a person on the phone and that the person is being coerced and/or manipulated seems to be the concern here. Our facility encounters that on a daily basis. To a certain extent I can agree that the practice is unfair. We have countered that by sending our claims and billings around to other networks and work with them to make sure that we will get paid for claims, that we will be able to do the work when we contact them and make sure that when we have a customer in our shop, they don't get told they have to go down the road to another place. We do quite a number of claims and run those through. This is what the lady from Allstate said about centralized billing and electronic commerce. I think that should be allowed to be continued. A large insurance company

needs to have the facility or the ability to recommend where a person can go. We send sales people out to agents when we go into a new area. They need to introduce us to the community. The only way we get introduced is through word of mouth and through advertising. I also testified on **HB 154** dealing with incentives. Incentives are an additional vehicle for a glass or auto body facility to encourage a person to call us first. That enables us to a certain extent to control the claim, but prepare the person when they do call the 1-800 number to report the claim. We tell them we back up our work and will not be overcharged. I offer a proposed amendment **EXHIBIT (bus61a22)** to this bill to address that particular concern. As it is written now, I oppose the bill. Thank you.

Lynda Reisbeck, Independent Agent, State Farm. I take great pride in the service I offer to my clients that come to me with problems as well as after accidents. This bill would eliminate the opportunities for me as an insurance agent to give my clients good, sound advice. Many times clients have come in tears not knowing where to go. This bill would take that privilege away from me. I am in opposition to **HB 506**. Please oppose this bill.

Laura Kotelman, Associate Counsel, National Assoc. of Independent Insurers. We represent over 619 member companies nationwide. One company of ours is USAA. They write for active military personnel. They have several policy holders at Malmstrom AFB who are new to Montana. If they have an accident, they will not be able to call USAA and ask where a reputable body shop is. It is going to hinder their customer service and they are worried about this bill. Next, this bill will force companies to eliminate their direct repair programs. These are an excellent fraud protection programs and will harm consumers in the long run by driving up prices. I would like to hand out some more information **EXHIBIT (bus61a23)** Thank you.

Ralph Wisher, Able Body Shop, Kalispell. I have had an auto body shop for 24 years. I employ 23 people. There are laws needed for glass and body shops but I don't think this bill is the one we need for our consumers in this state.

Jacqueline Lenmark, Consumer and American Insurance Assoc. House **Bill 506** turns the principles of insurance on their head. It diverts the insurance companies' proper focus on protecting their insured to the protection, development, advertising and support of a different industry. We ask you to table this bill. I would like to give you my personal experience. On Nov. 20, 1987 I was involved in a spectacular automobile accident. My vehicle was significantly damaged. The insurance adjustor who assisted me with that accident gave me recommendations to three body shops

here in Helena. I knew better. I exercised my choice as a consumer and went somewhere else. Not to my benefit. The next time, I want to follow the advice of my insurance adjustor. This bill will prevent me from having any of that input. I would ask you, personally, to table **HB 506**.

Sue Weingartner, Alliance of American Insurers. The Alliance is a national trade association representing over 270 property and casualty insurance companies. This bill is an apparent attempt to protect consumers. We believe it would render the cost savings features implemented by insurers ineffective in that it would prohibit insurers from referring claimants and policy holders to shops that through experience insurance companies recognize as being superior. This legislation will harm consumers it seeks to protect since it would result in higher repair costs and probable increase of insurance premiums. We ask you reject **HB 506**. I would like to hand out some more information **EXHIBIT (bus61a24)**. Thank you.

Jon Metropoulos, Farmer's Insurance Co. First I urge you to read carefully the bill itself and the proposed amendments of the sponsor. I have done that myself. This is not a level playing field as you were told. This actually takes what could be a level playing field if the Auditor's Office would enforce it and uses it against consumers and against insurance companies. One aspect of the amendments in particular, on page 5, subsections 5 and 6 of Section 5 deleted any aspects of balance in this bill. Those sections allowed insurance companies some chance to take body shops off the list who did not meet the criteria, allowed the insurance companies not to have to receive requests from body shops every week or so and eliminated that. The amendments are no improvement and those who are proponents of this bill knew the insurers had a difficult time with the bill as it started out and it is much worse now. Secondly, I would like you to consider this. As first proposed, this bill had two major Constitutional flaws. It prohibits free speech and it violates the interstate commerce clause of the U.S. Constitution. As it has been proposed to be amended, it also violates the equal protection clause of the Montana State Constitution and the U.S. Constitution because it allows independent agents to make recommendations but it doesn't allow agents who have contractual arrangements with one company like Farmers. This makes it a worse bill. As a legislator, you should be concerned about this. Courts in Illinois and Louisiana have already said that bills of this kinds are unconstitutional and our court here could do that. You can understand why insurance companies would take the time and money to overturn these kinds of laws in Illinois and Louisiana. They make a lot of money in those states. They don't here in Montana. We may be simply stuck with this law that does

not help consumers, drives away insurance companies, and drives up the premiums of those insurance companies that remain here.

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Questions from Committee Members and Responses:

SEN. THOMAS asked **Skip Clevenger** if his business declined when insurance companies started using the 1-800 numbers and sending their clients directly to Safelite or some other big glass company? **Mr. Clevenger** said it has affected his business. He didn't know the percentage. His business grew every year until lately and now it has stopped growing and he blames it partly on that technique. **SEN. THOMAS** asked if this was the nucleus of the real problem here? **Mr. Clevenger** said "yes".

SEN. COCCHIARELLA asked **Frank Crowley** if the 49 shops that he represents voted or supported this legislation. **Mr. Crowley** said there was a legislative committee that was delegated the responsibility of reviewing and drafting legislation. I would defer your question to Mr. Gregg who is the Executive Director. **Mr. Gregg** said that at the September 19, 1997 held in Great Falls, the members in attendance overwhelming endorsed legislation and asked the committee to pursue it. At that meeting we had approximately 35 members. He did not have an actual count.

SEN. COCCHIARELLA asked who exactly is Safelite. Are they a middleman, a distributor of glass, an installer of glass or what? **REP. SLITER** said his understanding of the question would be yes, all of the above. He wanted the question to be referred to another? **Mr. Larry McDonald** said that Safelite Auto Glass is the largest, corporate, retail glass company in the world. They are also a direct manufacturer of glass. The company is owned by a South African company called Belaran. The third party billing system was created by the insurance industry when they entered into contracts with Safelite. They are directly in competition with the small glass repair shops. They steer the customer. They control the manufacturing, the retail and they put out 80% of small businesses in Europe and now they are here. In five to six years they will do this. **SEN. COCCHIARELLA** asked if there was another entity that is a manufacturer of glass that can provide glass to the shops. **Mr. McDonald** said there is another one in the process right now called PPG Pro Stars. Their deadline was March 15 for glass companies nationwide to sign their contract. They are the largest manufacturer in the world of auto glass. PPG owns Links. The insurance industry has entered into contracts with Links. What better way to control the business nationwide and in Montana by controlling

manufacturing and by having people sign their contract and those contracts are paid for by the auto shops and it might cost \$5000 according to **REP. QUILICI**. If Econo Glass was to sign a contract with PPG Pro Stars, it would cost our shop \$50,000 the first year to belong.

SEN. COCCHIARELLA asked a lady who had an auto body repair shop if this bill was directed at the auto glass shops rather than the auto body shops. **She** said that the reason the auto body shops are included in the bill is they feel that the auto body shops will experience the same things that are happening to the auto glass shops in about five years. There are many direct auto repair shops already and they don't have to advertise. In Billings, Allstate has one direct auto body repair shop. Allstate is the third largest insurer in Montana. Should Allstate be able to direct 80% of their business to one shop?

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SEN. SPRAGUE asked **Larry** if he is a wholesaler and retailer. **Mr. McDonald** said Econo Glass is a wholesaler and he does buy from direct manufacturers in the U.S. which you have heard is Ford, Car-lite, Libby-Owens Ford, Guardian Industries, etc. Many of our customers are based throughout Montana, Wyoming, North and South Dakota. His company supplies the smaller shops. Everyday our customers complain that they cannot compete with Safelite Corp. because their customers are being steered through the network, third party billing, etc.

SEN. SPRAGUE asked **Gary Harris** if the small shops are intimidated by Safelite. **Mr. Harris** said "yes". **SEN. SPRAGUE** asked **Ms. Smoller** where she is from. **Ms. Smoller** said she was from Chicago. **SEN. SPRAGUE** asked how her company chooses their PRO shops and what does the acronym mean. **Ms. Smoller** said that PRO stands for Priority Repair Option. If the customer asks one of our agents for information concerning an auto body shop, the agent gives them a number of shops either close to their home or office, whichever they prefer. They can choose one of those names or another shop.

SEN. ROUSH asked **Ms. Smoller** if Allstate actually gives the customer their choice of repair shops whether auto or glass. Can you provide a copy of a contract that you use with these repair shops in selecting who does the work in relationship to the requirements so that the committee can see why some of these shops cannot get on your list. **Ms. Smoller** said that Allstate looks at various qualities: good customer service programs in place; can they handle increased volume; etc. Allstate does not look to exclude companies, but they want to have confidence in

the companies that are recommended to Allstate customers. Allstate's goal is to provide the customers with good information when they ask where to take their automobile. The goal is to have the customer choose. **SEN. ROUSH** asked if Allstate enters into a written contract with preferred companies. **Ms. Smoller** said "yes" and the way that the current law reads it does not permit companies to give names to any claimant unless they themselves ask for this information. Allstate cannot "steer" under current law.

SEN. BERRY asked **Greg Van Horssen** if you have a "Safelite" as such. **Mr. Van Horssen** said that his company does operate through a processor that is known as the Links system. It is a claims processing, claims handling arrangement that is owned, in the case, by PPG. He is not aware of any requirement that PPG glass be used and certainly State Farm reads the law and understands the law and does not direct, coerce, suggest as far as getting glass repaired because that is how the law reads. **SEN. BERRY** asked if that claims center is a glass shop. **Mr. Van Horssen** said that it is not. **SEN. BERRY** said that he has gone to Mr. Clevenger several times for new windshields and his rates have been matched once in a while. Someone will call up and offer a good deal, but the rates have never been lower than State Farm. He questioned the prospect that if these Safelite people are eliminated, everyone's rates are going to go up.

{Tape : 3; Side : A; Approx. Time Counter : 21.8}

SEN. THOMAS asked **Gary Spaeth** about the preferred list issue. Are the requirements within the language so strict that the insurance company could not go beyond the list and have additives to it. **Mr. Spaeth** said that the list that is in the bill would help develop their standards. Once those standards have been developed then it would be up to the body shops to see if they can meet those standards. **SEN. THOMAS** said if there was a standard that they wanted to delineate who had been approved by the insurance company and for how long, that could be part of their list. **Mr. Spaeth** said "yes". **SEN. THOMAS** asked about the 1-800 number business. Couldn't the insurance company, under this bill, say Mr. Thomas you can go ahead and have your glass replaced at the shop of your choice, the cost is expected to be \$300. If it is much more than that you need to get back to us. **Mr. Spaeth** said they could do that. The limitation is that the person with the 1-800 number can't be in direct competition. **SEN. THOMAS** said that would be a way of controlling cost and that is something they could do. **Mr. Spaeth** said the new 1-800 number could be developed that way. **SEN. THOMAS** then asked him to touch the cases that addressed the Constitutionality issue. **Mr. Spaeth** said that those two issues were looked at and his Department

feels the bill could stand muster if the Department has to go into litigation.

Closing by Sponsor:

REP. SLITER closed. Thank you for an excellent hearing. We are talking about coercion and fairness. We are seeing unfair trade practices here. I propose the amendments to you **EXHIBIT (bus61a25)**. Please concur in the amendments and concur in the bill. **SEN. BECK** will carry the bill on the Senate Floor.

{Tape : 3; Side : A; Approx. Time Counter : 29.6}

HEARING ON HB 264

Sponsor: **REP. DIANE WYATT, HD 43, GREAT FALLS**

Proponents: **Dan Whyte, Chief Legal Counsel, Secretary of State**

Opponents: **None**

Opening Statement by Sponsor:

REP. DIANE WYATT, HD 43, GREAT FALLS. I bring to you **HB 264** which is from the Secretary of State's office which deals with corporate licensing and fees. It is an important bill because it will expedite business law and corporate law. It strikes the name of "county" which is redundant. It is unnecessary to have the counties stipulated in what appears before the office. It amends the assumed business name only when the description of the business, in the transaction that it takes place, changes. It allows shareholders to vote via proxy electronically. It accepts the resident agent's appointment only when that resident agent is notified of this and signs off with the office of the Secretary of State. Thank you.

Proponents' Testimony:

Dan Whyte, Chief Legal Counsel, Secretary of State. I am here to speak as a proponent of the bill. Leslie Shell-Beckert, Bureau Chief, Business Services, and I have received a number of calls over the last few years from business people and others who had confusion about how some of the parts of the corporate acts read. As a result, she and I began to compile their comments and questions to see if those points could be clarified in the corporate statutes and limited liability company act. This is the purpose of this bill.

There is discussion of assumed business name changes. The bill removes the requirement for providing our office with the Montana county or counties in which the business is being transacted. The reason for this deletion is there is no purpose in using it in our office. There is no value in having this. It doesn't limit the corporations in any way and only makes them fill out more in the forms that we provide to them. As a result, we do not see the necessity for this. We keep a list of corporate names and other business entity names. No two names in the current statute can be alike, for obvious reasons. We regulate what names are filed with our office. They have to be distinguishable on the record. There are some exception to that. We are including in the list of exceptions the use of the same name by two companies only under certain circumstances. One is if they are the same company with different types of entity. If the same company has a corporation and limited liability company. They do two different things but have the same name. This would allow merging companies to do this without a conflict.

We have had a problem with companies using registered agent names without the knowledge of the registered agents. There are law firms throughout the state that act as registered agents for business entities. There are also companies that do specifically act as registered agents. They are nationally recognized companies. Someone who is filing a document with us may say, we want this company to be our agent, but the company may not be aware of it until they start to receive filings or complaints. This bill includes a provision that anytime someone signs up their corporation, they have to have a signature and acknowledgment from the registered agent saying "yes" they are the registered agent and are aware of it and willing to act as that agent.

There is a new provision allowing proxies by electronic transmissions. This is one of many efforts by the Secretary of State's office to bring Montana businesses into the new millennium to allow business through the Internet and other electronic means.

There is some confusion in Articles of Dissolution and Articles of Amendments for corporations. It is unknown by us or members of that corporation whether the Board of Directors are able to make the changes or dissolve the corporation or whether the shareholders' approval is required. There is a provision that specifically references the corporation who is dissolving or amending tell us whether they need shareholder approval.

There is a new provision for allowing the registration of foreign names. Limited liability companies currently have no provision for filing foreign names registration as do other foreign

entities such as corporations. This is a clarification to include them.

The changes proposed by this bill streamline the process and clarify certain sections that have caused businesses in Montana problems. We believe the changes make good business sense and will help us to provide good service to business. Thank you.

Opponents' Testimony: None

{Tape : 3; Side : A; Approx. Time Counter : 36.7}

Questions from Committee Members and Responses:

SEN. HERTEL asked **Mr. White** what type of a procedure must be used when a new business issues you a name that they want to apply for so their company will not conflict with another company in the state. **Mr. White** said there is a list of names on the database of Montana businesses. We look to only register a new name if it is distinguishable on the record from other names. If there is a Montana Car Co. and someone wanted to register Montana Car, Inc., it would not be possible because the two are not distinguishable. They are too similar. If they wanted to register as Montana Car Co. of Helena, that would be distinguishable. The companies themselves may dispute that and there are other provisions for contesting that name in order for the Secretary of State's office and an administrative hearings officer to determine whether there is confusion in the industry itself.

SEN. HERTEL asked if the bill will help the Secretary of State's office. **Mr. White** said that it only helps them to the extent of those business entities that are the same or have the same directors that want to keep the same name. It doesn't streamline the efforts of the name itself.

Closing by Sponsor:

REP. WYATT closed. I would ask for a Do Concur and **SEN. COCCIARELLA** will carry the bill on the Senate Floor. Thank you.

{Tape : 3; Side : A; Approx. Time Counter : 39.1}

HEARING ON HB 201

Sponsor: **REP. JOHN COBB, HD 50, AUGUSTA**

Proponents: None

Opponents: None

Opening Statement by Sponsor:

REP. JOHN COBB, HD 50, AUGUSTA. This bill clarifies the state cooperative purchasing laws to include participation by Montana tribes. Cooperative purchasing means that under Montana law, Montana political subdivisions may purchase supplies and services in cooperation with the State of Montana and vice versa. This allows local governments and school districts to take advantage of the cost savings realized by the state's volume purchasing. Currently, local governments can benefit by purchasing vehicles from state term contracts. They can purchase certain commodities from the Department of Transportation. Sometimes the state seeks a bid on asphalt under an agreement that they can buy as much as they want for a certain price. This would allow local governments to come in and ask the state to buy for them at the same price. This just treats the tribal governments the same as any of the other local governments.

Questions from Committee Members and Responses:

SEN. COCCHIARELLA asked why this wasn't done before this time.

REP. COBB said that it just hasn't been done on the books. It just stated local governments and the tribes were probably not aware of it. The Department thought the tribes could do it, but the definition was not correct to include them. When this came to his attention, he wanted to correct it.

Closing by Sponsor:

REP. COBB closed. **SEN. THOMAS** will carry the bill on the Senate floor.

ADJOURNMENT

Adjournment: 12:00 P.M.

SEN. JOHN HERTEL, Chairman

MARY GAY WELLS, Secretary

JH/MGW

EXHIBIT (bus61aad)